Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use By the Mobile-Satellite Service	)	ET Docket No. 95-18
	)	
The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band	)	IB Docket No. 99-81
	)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service	)	RM-9498
	)	
Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service	)	RM-10024

REPLY COMMENTS OF CELSAT AMERICA, INC.

Celsat America, Inc. ("Celsat"), by undersigned counsel, hereby submits the following reply comments on the Commission's Further Notice of Proposed Rulemaking in the above-captioned dockets (the "FNPRM").[1] Not one of the commenters in this proceeding has demonstrated that the public interest would be served by the reallocation of even a single megahertz of 2 GHz MSS spectrum. On the contrary, as Celsat and others amply demonstrated

[1] In the Matter of Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 01-224 (2001).

by their comments in this proceeding, reallocating any portion of the 2 GHz MSS band would undo years of coordinated effort at the Commission and International Telecommunication Union to (i) allocate the band, (ii) devise relocation and sharing rules for incumbents and new entrants, and (iii) authorize Celsat and others to bring their valuable services to the public. The Commission should not permit interested parties to thwart the Commission's efforts to bring advanced wireless services to *all* Americans, not just those who live in major cities. Indeed, notwithstanding the enormous amounts of spectrum already allocated to terrestrial wireless services in the United States, millions of Americans remain unable to gain access to the kinds of digital services that city-dwellers take for granted. Given the economics of building ground towers in sparsely populated regions, reallocating spectrum from the 2 GHz MSS band to terrestrial uses will not change the harsh reality of the digital divide in this country. Satellites provide the best—and perhaps only—way to bridge this digital divide in America. Accordingly, Celsat urges the Commission to forge ahead with its original vision of IMT-2000 – which has always relied on a satellite component -- by retaining the entire 2 GHz MSS band intact and permitting the 2 GHz MSS licensees to offer their services across the entire 2 GHz MSS band.

I. THE COMMISSION SHOULD PRESERVE THE ENTIRE 2 GHZ BAND FOR MSS SERVICE AND THEREBY ENCOURAGE THE SWIFT PROVISION OF ADVANCED WIRELESS SERVICES TO UNDERSERVED AREAS

In the FNPRM, the Commission calls for comments on its proposal to reallocate between 10 and 14 MHz of spectrum in the 2 MSS GHz band for terrestrial uses. Notwithstanding the Commission's limited proposal in the FNPRM, some commenters propose that *all* of the 2 GHz MSS spectrum be reallocated for speculative terrestrial uses.[2] Total reallocation would require rescission of licenses issued just months ago to eight MSS system

[2] See, e.g., AT&T Wireless Comments at 8-9; Cingular Comments at 5 & 7; CTIA Comments at 4.

proponents[3] and would contradict the Commission's dismissal of just such a proposal by CTIA in the FNPRM.[4] This argument also ignores WRC-2000's reservation of core MSS spectrum in the 2 GHz MSS band allocated globally for the "satellite component of IMT-2000."[5] Accordingly, the Commission should summarily reject these comments seeking to reallocate the entire 2 GHz MSS band.

Partial reallocation of the 2 GHz MSS band likewise should be rejected because it would contravene the Commission's prior determination that 70 MHz is necessary to achieve the public interest benefits of MSS.[6] In addition, as noted above, reallocation of even a single megahertz of the 2 GHz MSS band would unravel a decade of international spectrum coordination and thwart the rapid deployment of low-cost advanced services to underserved areas.[7]

Some commenters argue that the Commission should reallocate at least the 2165 – 2170 MHz portion of the 2 GHz MSS band because it is not allocated for MSS on a global

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[3] See FCC International Bureau Authorizes New Mobile Satellite Service Systems in the 2 GHz Band, News Release, 2001 FCC Lexis 3850 (July 17, 2001).

[4] FNPRM at ¶¶ 23 & 58 (denying CTIA's request for reallocation of all 2 GHz MSS spectrum and for a delay in authorization of licenses to 2 GHz MSS applicants). See also id. at ¶ 22 (noting the Commission's intent to "explore and seek comment here on a broader range of options for deployment of advanced wireless services, without adversely affecting the 2 GHz MSS systems' ability to commence operations.").

[5] FNPRM at ¶ 29.

[6] See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 12 FCC Rcd 7388 at ¶14 (1997) ("1997 Allocation Order"), aff'd on recon., 13 FCC Rcd 23949 at ¶ 10 (1998); See also, Globalstar Comments at 5.

[7] Advocates of reallocation simply ignore the Commission's acknowledgement of "the potential value of MSS in areas that may not be readily or economically served by PCS, such as sparsely-populated rural areas." 1997 Allocation Order at ¶ 3. See also In the Matter of the Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, 15 FCC Rcd 16127 (2000) ("2 GHz Licensing Decision") at ¶ 1 ("2 GHz MSS systems will . . . promote development of regional and global communications to unserved communities in the United States, its territories and possessions, including rural and Native American areas, as well as worldwide.").

basis.[8] Although this small segment of the 2 GHz MSS band is not allocated globally for MSS, it *is* allocated for MSS internationally in all of Region 2. As noted by the Canadian licensee, TMI, Canada and Mexico also have allocated the 2165 – 2170 MHz portion of the 2 GHz MSS band for MSS, which would permit TMI and other regional operators to advance the public interest by providing much needed MSS service in those frequencies across all of North America.[9] For this reason alone, the Commission should retain the 2165 – 2170 MHz portion of the 2 GHz MSS band solely for MSS.

Moreover, if the Commission were to reallocate this small spectrum block at 2165-2170 MHz, the delicate balance struck in the Commission's relocation rules between the rights of incumbents and new entrants would be upset, requiring the Commission to craft new relocation rules for the 2 GHz band.[10] Given the amount of time it took for the Commission to develop relocation rules to allocate costs between two separate groups of users (i.e., BAS and MSS providers in the uplink and FS and MSS providers in the downlink), one would expect the Commission to take even more time to develop relocation rules to allocate the costs among three separate groups of users (i.e., BAS, MSS and terrestrial new entrants in the uplink and FS, MSS and terrestrial new entrants in the downlink), if such relocation rules could even be crafted in workable fashion. It hardly seems sensible to so severely disrupt the relocation process for the 2 GHz MSS band in order to obtain a mere 5 MHz of spectrum for reallocation.

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[8] Ericsson Comments at 11-13; Motorola Comments at 12-13; Qualcomm Comments at 2, 3; Siemens Comments at 3; Comments of The Wireless Communications Division of the TIA ("WCD") at 6.

[9] See 2 GHz Licensing Decision at ¶14. See also, Comments of TMI Communications and Company, Limited Partnership at 3-5.

[10] Accord New ICO Comments at 32.

Several commenters claim that MSS licensees are doomed to failure and, therefore, the Commission should reallocate the spectrum for terrestrial uses.[11] By the logic of these claims, which cite the financial difficulties of individual MSS licensees, the financial difficulties of Nextwave would warrant reallocation of all PCS spectrum.[12] The difficulties of some MSS providers do not guarantee the failure of all 2 GHz MSS providers and certainly do not guarantee the failure of Celsat—which has an entirely different system architecture and uses a vastly smaller handheld phone than other MSS providers. Some commenters likewise reiterate that the request of MSS providers for terrestrial reuse of satellite spectrum (which the Commission is currently addressing in a separate proceeding[13]) indicates that MSS as originally envisioned is not viable. As Celsat noted in its comment in this proceeding, Celsat's business is entirely viable even if terrestrial reuse is not permitted.[14] The Commission's Flexible Use NPRM is not about the viability or non-viability of MSS, but about the efficient use of spectrum consistent with Commission rules.

Numerous commenters also argue that – given the supposed difficulties of the MSS industry – reallocating spectrum to terrestrial uses will speed the delivery of 3G services to the public.[15] Terrestrial wireless providers in Europe and Japan, however, are realizing how costly (and technically challenging) it is to build-out terrestrial 3G networks: Delays can be

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[11] See, e.g., Comments of AT&T Wireless Services, Inc. at 7; Cingular Comments at 7; CTIA Comments at 3.

[12] Accord, Globalstar Comments at 15 ("No one would suggest that Verizon's financing shortfall demonstrates that cellular service no longer serves the public interest.").

[13] See In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band, Notice of Proposed Rulemaking, FCC 01-225 (2001) ("Flexible Use NPRM").

[14] Celsat Consolidated Comments at 7.

[15] See e.g., AT&T Wireless Comments at 8-9; Cingular Comments at 7-10; CTIA Comments at 4, 6-7.

expected, and the cost of such deployment may be prohibitive in the short-term. Given the delayed deployment of these much-touted terrestrial 3G services,[16] the public interest may be severely undermined by reallocating the spectrum for purely terrestrial uses. It is also possible that some of the same setbacks plaguing providers of *wireline broadband* may effect would-be providers of terrestrial-only wireless broadband.[17] In short, reallocating portions of the 2 GHz band for terrestrial 3G services likely will undermine rather than advance the Commission's goal of providing 3G services to the public as soon as possible.

II. ANY ABANDONED 2 GHZ MSS SPECTRUM SHOULD BE MADE AVAILABLE TO THE REMAINING 2 GHZ MSS LICENSEES

Several commenters suggest that any MSS spectrum abandoned as a result of missed milestones should be reallocated to terrestrial providers.[18] One commenter would additionally impose a "zero tolerance" standard for missed milestones and another argues against an "arbitrary" spectrum floor and even asks the Commission to reject the core MSS spectrum

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[16] Nicholas George, Sonera attempts to calm fears over finance, Financial Times (Jul. 24, 2001) (Finnish-based Sonera may abandon its 3G license in Norway as result of "struggling to finance the costs of setting up [its] new 3G networks [in Germany]", Almar Latour, Telecom Outlook Is Still Bleak Despite Recent Share Rally, Wall Street Journal Europe (Oct. 19, 2001) (noting that 3G has caused many European operators to suffer high-debt levels and that European 3G service has "run into major rollout delays."); Irene M. Kunii, 3G: Not A Bang, But A Whimper, BusinessWeek (Oct. 8, 2001) ("DoCoMo is still experiencing the network jams and technical glitches . . . that forced it to delay [its] 3G launch from May to October."); Interview with Philip Townsend, Barron's Online, (Oct. 29, 2001) ("The development of 3G, or mobile Internet as we call it, has generated huge debts for the system operators which need to be addressed. Equally, we believe that demand for mobile data will be poor and that an evolutionary product, such as GPRS or 2.5G, will suffice, meaning that 3G licenses are virtually worthless. The outlook for 3G is bleak . . . . No one needs it. There is no content. The handsets really don't work well. And it is too expensive.")

[17] See, e.g., Dennis K. Berman, Bells Make a High-Speed Retreat from Broadband: After Billion-Dollar Build-Up Expansion Plans Are Put Off, Wall Street Journal (Oct. 29, 2001) at B1. It is noteworthy that Sprint has remained silent in this proceeding concerning the need to reallocate 2 GHz MSS spectrum; Sprint has been quoted elsewhere as noting that it has "adequate spectrum for 10 years." Carriers Have Say on 3G Wireless, Wireless Week (Jun. 28, 2001).

[18] AT&T Wireless Comments at 9; CTIA Comments at 6; Progress & Freedom Foundation Comments at 19.

allocated globally which WRC-2000 identified for the satellite component of IMT-2000.[19] In the FNPRM, however, the Commission determined that MSS systems will need additional spectrum as they mature, and announced its intent not to "significantly impair any of the current licensees rights and reasonable expectations to . . . acquire additional MSS spectrum for purposes of deploying and operating a fully matured 2 GHz MSS system."[20] The only way to preserve the "reasonable expectations" of the current 2 GHz MSS licensees concerning their ability to acquire additional MSS spectrum is to reject the aforementioned comments suggesting that all abandoned spectrum be reallocated to terrestrial uses and to make such abandoned spectrum available to the current 2 GHz MSS licensees.

In adopting the "hybrid band arrangement" for licensing 2 GHz MSS systems, the Commission found that "providing for 3.5 MHz for each system is sufficient to *commence operations*."[21] The Commission did not, however, determine that 3.5 MHz of spectrum is sufficient for a fully mature MSS service. Indeed, to recount just a few of the 2 GHz MSS spectrum requests, Celsat requested 25 MHz of spectrum in the 2 GHz MSS uplink and 25 MHz of spectrum in the 2 GHz MSS downlink, Boeing requested 8.25 MHz of spectrum in the uplink and 8.85 MHz of spectrum in the downlink, and MCHI requested 35 MHz of spectrum in the uplink and 35 MHz of spectrum in the downlink.[22] In other words, the 2 GHz MSS applicants collectively requested far more spectrum than is available in the 2 GHz MSS band.

Under these conditions of potential mutual exclusivity among competing satellite applications, the Commission decided to "forge a band arrangement that avoids mutual

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[19] See Progress & Freedom Foundation at 3, 11 & 9; CTIA Comments at 5-7.

[20] FNPRM at ¶ 29.

[21] 2 GHz Licensing Decision at ¶ 17 (emphasis added).

[22] Public Notice, Report No. SPB-119 (Mar. 19, 1998).

exclusivity by accommodating all 2 GHz MSS system proponents."[23] Each of the 2 GHz MSS licensees accepted its spectrum assignment with the explicit understanding that it was a compromise in order to avoid mutual exclusivity and that the licensees would have the opportunity to pursue additional 2 GHz MSS spectrum at a later time. Indeed, the "hybrid licensing approach" as set forth in the 2 GHz Licensing Decision, at a minimum, guaranteed each of the 2 GHz MSS licensees an opportunity to seek additional spectrum in that portion of the band reserved for award to licensees providing service to rural areas.[24] As the Commission and each of the 2 GHz MSS applicants knew, however, even with the addition of the "rural spectrum", the systems would need access to far more spectrum as they became fully mature. The best assessment of the "reasonable expectations" concerning the 2 GHz MSS licensees' spectrum needs for their "fully mature" 2 GHz MSS systems—as opposed to systems that can merely "commence operations"—is to take the spectrum requests set forth in each of the 2 GHz MSS applications at face value.[25] Given that the aggregate spectrum requests of the 2 GHz MSS applicants far exceeded the available spectrum, the best way to preserve the reasonable expectations of the 2 GHz MSS applicants is to reallocate every single megahertz of abandoned 2 GHz MSS spectrum to the existing 2 GHz MSS licensees.

[23] 2 GHz Licensing Decision at ¶ 30, n. 107.

[24] Id. at ¶ 16.

[25] In other words a "fully mature" Celsat 2 GHz MSS system would use 25 MHz in the uplink and 25 MHz in the downlink. Likewise, a "fully mature" Boeing system would use 8.25 MHz in the uplink and 8.85 MHz in the downlink.

III. THE COMMISSION SHOULD RETAIN THE CURRENT FLEXIBILITY OF ASSIGNMENT SELECTION WITHIN THE 2 GHZ MSS BAND

Several commenters ask that the Selected Assignments of MSS licensees be modified in order to preserve contiguous spectrum for terrestrial 3G providers (i.e., that the Commission limit such assignments to 3.5 MHz increments, starting from 2200 MHz (downlink) and 2020 MHz (uplink) and declining in frequency in each of those bands).[26] Celsat opposes these restrictions on the Selected Assignments because they would deny MSS licensees the maximum flexibility needed to provide service until the relocation of incumbents is completed.[27]

The Commission designed its relocation rules in this proceeding to minimize the costs to 2 GHz MSS licensees and to provide an orderly transition of the incumbents out of the band over the course of many years.[28] The Commission wanted to provide "maximum flexibility" to MSS operators during the relocation process in order to promote sharing of the 2 GHz MSS frequencies to the extent possible.[29] Modifying the Selected Assignments as suggested above would thoroughly undermine the Commission's goals in designing the relocation rules for 2 GHz MSS and, accordingly, the Commission should refrain from doing so.

In the event the Commission does take the drastic step of reallocating a portion of the 2 GHz MSS band — and thereby undermining a primary purpose of the relocation rules — the Commission should ensure that 2 GHz MSS licensees are required to pay only those relocation costs they would have incurred under the Commission's original relocation plan.[30]

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[26] CTIA Comments at 7-8; Ericsson Comments at 12; Verizon Comments at 15; WCD Comments at 7.

[27] 2 GHz Licensing Decision at ¶ 42.

[28] Id.

[29] Id. at ¶ 69 ("We also encourage the MSS, BAS, and FS industries to study the feasibility of band sharing between any two or all three of these services, on a short term or permanent basis.").

[30] Accord New ICO Comments at 34-35.

This policy seems entirely sensible given that any increase in the relocation expenses of 2 GHz MSS licensees will be a direct result of CTIA's request to reallocate the band for terrestrial uses. The far better outcome, however, would be for the Commission to retain the entire 2 GHz MSS band intact and permit the relocation process to go forward using the existing relocation rules.

IV. CONCLUSION

For the foregoing reasons, the Commission should retain the entire 2 GHz MSS allocation intact and reallocate any abandoned 2 GHz MSS spectrum to the existing 2 GHz MSS licensees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael Murphy, hereby certify that on this _8th_ day of November, 2001, copies of the foregoing "Reply Comments of Celsat America, Inc." were served by courier on the following parties:

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